IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10244 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

VIRAMBHAI J MERAMBHAI

Appearance:

MR NAGESH C SOOD for Petitioner No. 1

MR DA SURANI for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 27/02/2002

ORAL JUDGEMENT

By the present petition Gujarat State Road Transport Corporation ("the Corporation" for short) has

challenged the judgement and award dated 6.9.2000 passed in Reference (LCS) No.1195 of 1989, a copy of which is produced at Annexure 'A' (Colly) and the order below exhibit 13 in the same reference is produced from pages 13 to 18. Thereafter the judgement and award in the reference is produced.

2. It is sad that a person who is employed as a 'Badli' conductor starts indulging in financial irregularities before his employment is secured. In the present case the respondent workman while serving as Badli conductor, while on duty on 4.9.1987 was found to have indulged in a financial irregularity. It is recorded by the learned Judge of the Labour Court in categorical terms in para 6 that in cross examination the respondent workman admitted that, "it is true that in departmental inquiry I had admitted that a mistake is committed by me." It is also recorded by the learned Judge that the respondent workman has admitted that, "It is true that in the departmental proceedings I was given full opportunity". Thereafter, the learned Judge observed in para 12 that as per the settled position of law when a departmental inquiry is declared to be illegal on account of violation of principles of natural justice, the dismissal order issued pursuant to such departmental inquiry gets automatically cancelled. The learned Judge has further observed that in the present case by an order dated 15.6.1999, a copy of which is produced at Annexure 'A' to this petition it was held that, 'the departmental inquiry is illegal'. Against that order the petitioner corporation had preferred Special Civil Application No.2803 of 2000 which was rejected by this Court on 10.4.2000 on the ground that the same is filed at an interim stage. However, it was observed that it will be open for the petitioner corporation to challenge the same by filing a writ petition after the matter is finally decided. Despite this, the Labour Court has observed that the order below exhibit 13 survives even after the aforesaid two admissions of the respondent workman in exhibit 18 (para 6 of the judgement and award).

3. The learned Judge was pleased to quash and set aside the order dated 15.12.1987 whereby the name of the respondent workman was deleted from the waiting list. The Labour Court was pleased to award 20% back wages besides reinstatement and cost of Rs.500/-. The judgement and award is misconceived as it is not in line with the latest law declared by the Honourable the Apex Court by judgements in the case of Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) and others v. Secretary Sahakari Noukarara Sangha and

others, reported in (2000) 7 SCC 517; and Karnataka State Road Transport Corporation v. B.S. Hullikatti, reported in (2001) 2 SCC 574.

4. Mr.Surani, learned advocate instead of pointing out at the initial stage that the respondent workman is reinstated in service, allowed the other side to complete his arguments and thereafter completed his arguments. Only after the matter was fully heard and dictation of judgement started, pointed out this fact. The same cannot be taken cognisance, more so when learned advocate allowed the matter to proceed and and thus, took chance of succeeding in the mater qua back wages. It is not a healthy practice. It is deprecated.

5. The impugned judgement is hereby quashed and set aside. Rule is made absolute with no order as to costs.

6. Mr.Surani requests for stay of operation of this judgement and order. The request is misconceived, hence rejected.

(Ravi R. Tripathi, J.)
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